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## A Surprising Book

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# A SURPRISING BOOK

David G. Epstein

Reviewing

JAMES PARKER HALL, ED., 1 AMERICAN LAW & PROCEDURE  
(La Salle Extension University 1910)

I WAS SURPRISED TO SEE an old law book in good condition in the dollar bin outside a Washington, D.C. used book store: *American Law and Procedure, Volume 1*. And then I looked at the bottom of the spine: “La Salle Extension University.”

I remembered La Salle Extension University from the advertisements in all the pulp magazines that I read as a kid.<sup>1</sup> I was not surprised that La Salle Extension University had a correspondence law program, had its own law books. I was surprised that those books had fine buckram covers.

Notwithstanding the attractive binding, I did not think that a book with “La Salle Extension” on the cover was anything that I wanted. But I remembered what my mom, a blog, or somebody told me about judging a book by its cover. So I decided to look at least at the copyright page – “1910 By La Salle Extension University” – and the title page.

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<sup>1</sup> [www.britannica.com/blogs/2007/03/career-building/](http://www.britannica.com/blogs/2007/03/career-building/); [www.tias.com/cgi-bin/showcase-item.cgi?itemKey=1923033450&store=/stores/mspackratz](http://www.tias.com/cgi-bin/showcase-item.cgi?itemKey=1923033450&store=/stores/mspackratz).

The title page was another surprise. It indicated that *American Law and Procedure* was “prepared under the editorial supervision of James Parker Hall ... Dean of the University of Chicago Law School.” In 1973, I had the good fortune to be a visiting professor for two terms at the University of Chicago Law School. I don’t remember Bernie Meltzer, who was then the James Parker Hall Professor of Law, or Richard Epstein, who is now the James Parker Hall Professor of Law, telling me about the University of Chicago’s La Salle Extension connection.<sup>2</sup>

Other names on the title page are Harry Sanger Richards, who was then Dean of the College of Law at the University of Wisconsin, Walter Wheeler Cook, who was then a Professor at Columbia Law School, and Charles Andrew Huston, who was then Dean of the Stanford Law School. Richards authored the Contracts portion of the book, Cook did Quasi-Contracts, and Huston did Agency. I teach contracts, and so I bought the book and read the Prefatory Note, the Introduction, and the 159 pages on contracts law.

In his Prefatory Note, Dean Hall (1) describes his purpose as making the “principal doctrines of American law” “readily comprehensible ... to ... intelligent readers without technical legal training,” (2) compares his purpose in editing *American Law and Procedure* to Blackstone’s purpose in preparing his *Commentaries*, and (3) explains why all the writing was done by “professional teachers

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<sup>2</sup> There was a time when Wikipedia noted this connection – when I visited on August 12, 2008, for example. See [http://en.wikipedia.org/wiki/La\\_Salle\\_Extension\\_University](http://en.wikipedia.org/wiki/La_Salle_Extension_University) (“The University [La Salle Extension] was in operation for over 90 years, from 1908 to around 2000 and was affiliated with the University of Chicago through adjunct professors, scholars, writers, and other members of its faculty.” (emphasis added)). But not anymore. See *id* (visited September 12, 2008, only to find that the italicized portion of the passage quoted above had disappeared). An unpublished dissertation available from the University of Chicago library explores the pioneering role of William Rainey Harper and the University of Chicago in establishing an Extension Division. There is no mention of any relationship or connection between the University of Chicago and La Salle Extension University. Maureen Anne Fay, *Origins and Early Development of the University of Chicago Extension Division, 1892-1911* (March 1976, Publication Number AAT T25941).

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of law in our larger university law schools.”<sup>3</sup> According to Dean Hall, a person writing about law for “popular presentation” must be able to

seize its cardinal points and present them clearly and forcibly . . . . No men as a class are so likely to do this well as professional teachers in university schools of law, who are constantly engaged in analyzing and classifying this immense mass of legal material, and arranging it for presentation to students in the most orderly and forcible manner. By profession such men are specialists with a talent for lucid explanation . . . .<sup>4</sup>

This description of the work and “talent” of law professors would be a surprise to many law students today. And to the former law students who are trying to get jobs as law professors.

And seeing Dean Richards as an author of a La Salle Extension University text used as a part of its correspondence law school program would be a surprise to really old Wisconsin lawyers, as well as to Jack Schlegel,<sup>5</sup> Steve Sheppard,<sup>6</sup> and other experts in the history of legal education. Dean Richards had strong ideas about how lawyers should be trained and even stronger ideas about who should be trained to be a lawyer. He is credited with establishing the case method at the University of Wisconsin Law School<sup>7</sup> and with building the law school’s relations with social science departments at the University.<sup>8</sup>

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<sup>3</sup> *American Law and Procedure* i, iii.

<sup>4</sup> *Id* at iii.

<sup>5</sup> Cf Alfred S. Konefsky & John Henry Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 Harv. L. Rev. 833 (1982).

<sup>6</sup> Cf Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 Iowa L. Rev. 547 (1997).

<sup>7</sup> Burr W. Jones, *Dean Richards – His Ability as an Administrator*, 5 Wisc. L. Rev. 270, 271-72 (1929). See also Robert Stevens, *Law School: Legal Education in America from the 1850’s to the 1980’s* 79 (1983).

<sup>8</sup> W.H. Page, *Dean Harry Sanger Richards*, 5 Wisc. L. Rev. 257, 263 (1929).

Dean Richards is also “credited” with leading the opposition to part-time legal education.<sup>9</sup> In his address as president of the Association of American Law Schools, he praised medical education initiatives to eliminate part-time and for-profit programs, and made the following argument for similar changes in legal education:

If you examine the class rolls of the night schools in our great cities, you will encounter a very large proportion of foreign names. Emigrants and sons of emigrants, remembering the respectable standing of the advocate in their old home, covet the title as a badge of distinction. The result is a host of shrewd young men, imperfectly educated, crammed so that they can pass the bar examinations, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes. It is this class of lawyers that cause the Grievance Committees of the Bar Association the most trouble.<sup>10</sup>



I found no surprises in Dean Richards’ explanation of contracts law. It supports the language in Dean Hall’s preface: “presentation ... in the most orderly and forcible manner.”<sup>11</sup> And short. Only 159 pages, so coverage is somewhat abbreviated. For exam-

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<sup>9</sup> See generally Michael J. Mazza, *Comment, The Rise and Fall of Part-Time Legal Education in Wisconsin: 1892-1924*, 81 Marq. L. Rev. 1049 (1998).

<sup>10</sup> Harry S. Richards, *Progress in Legal Education*, in *1915 Handbook of the Association of American Law Schools and Proceedings* 63 (1916); see also N.E.H. Hull, *Restatement and Reform: A New Perspective on the Origins of the American Law Institute*, 8 L. & Hist. Rev. 55, 62-63 (1990). Remember, Wisconsin is not only the state that gave us La Follette but also the state that gave us McCarthy.

<sup>11</sup> A comparison of Dean Richards’ explanation of contracts with *Clark on Contracts*, West’s contracts hornbook of that era, also supports Dean Hall’s statement that “[n]o men as a class are so likely to do this well as professional teachers in university schools of law.” Clark was not a teacher in a university school of law, although he is a named party in a reported case, *Clark v. West*, 86 N.E. 1 (N.Y. 1908), now taught in the contracts course at many university schools of law. Do

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*James Parker Hall “utterly disbelieve[d]  
in the possibility of adequately  
training men by correspondence study  
for the practice of law.”*



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ple, only 2 pages on the parol evidence rule; only 3 pages on mistake; and surprisingly, 10 pages on assignment and delegation.

The real surprise about contracts comes not from what Dean Richards wrote in *American Law and Procedure*, but from what Dean Hall later wrote in the *American Law School Review*.<sup>12</sup> In a statement “to correct any possible erroneous inferences from the connection with the work of either its contributors or editors,”<sup>13</sup> Dean Hall made the following points:

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you remember that case? It involved Clark’s contract with the West Publishing Company that provided for payment of \$2 a page on each book he prepared for West and “if [he] abstains from the use of intoxicating liquor ... he shall be paid an additional \$4 per page.” Id at 4.

<sup>12</sup>The *American Law School Review* is generally described as the predecessor to the *Journal of Legal Education*. It has also been described as the predecessor to the *US News* law rankings and to the Brian Leiter law school blog. Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 *Tex. L. Rev.* 1483, 1507 fn 137 (2004).

<sup>13</sup>*Communications: A Statement by James Parker Hall*, 2 *Am. L. Sch. Rev.* 476, 477 (1910). This “Statement” was clearly prompted by an article which had appeared in the previous issue of the *American Law School Review*. In that article Samuel MacClintock, Ph.D., Educational Director, La Salle Extension University, had used Dean Hall’s name and much of the language of Dean Hall’s preface to tout the textbooks used by La Salle in its correspondence law course. Samuel MacClintock, *Law Instruction in the La Salle Extension University*, 2 *Am. L. Sch. Rev.* 411 (1910).

- *American Law and Procedure* was written to educate non-lawyers about law “from the standpoint of citizenship or of their special occupations” and serve as an “elementary reference work” for lawyers with limited access to law books;
- Use of *American Law and Procedure* for the correspondence study of law was “wholly unthought of” when Hall and his co-authors contracted to edit and write the books, and Hall and most of the co-authors “utterly disbelieve in the possibility of adequately training men by correspondence study for the practice of law;”<sup>14</sup>
- Nothing in the contracts between the publisher and Hall and the various authors stated or in any way limited the possible uses of the book;
- Through a series of transfers the contracts and copyrights were transferred<sup>15</sup> from the original publishing firm to a firm connected with La Salle Extension University;<sup>16</sup>

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<sup>14</sup>But cf *Book Review*, 13 Wisc. Alumni Mag. 212, 213 (Jan. 1912), <http://digioll.library.wisc.edu/cgi-bin/UW/UW-idx?type=article&did=UW.V13I4.I0018&q1=American%20Law%20and%20Procedure> (“these volumes for the young man will serve the ambitions for a professional career to whom the advantages of a college education are denied as a guide for his studies”).

<sup>15</sup>Dean Richards’ discussion of which contracts can be assigned raises an interesting question as to whether a publishing contract can be transferred. *American Law and Procedure* at 89-90. A copy of the contracts would be helpful in answering this question and possible parol evidence and mistake questions. I was not able to find a copy of the contract. La Salle Extension University no longer exists. Before closing, La Salle was acquired by MacMillan, and then by Simon & Schuster.

<sup>16</sup>I was surprised to learn that the “first” Adlai E. Stevenson, *i.e.*, the former Vice President (not the should-have-been President), was connected to La Salle. See *Stevenson to Quit Law: Former Vice President to Aid La Salle Extension University*, N.Y. Times, Mar. 2, 1909, <http://query.nytimes.com/gst/abstract.html?res=9A07EE D81031E733A25751C0A9659C946897D6CF>.

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- These transfers occurred when “the work was so far advanced ... that it was not practicable to abandon it, without heavy financial loss to all concerned, even if this could have been done without breach of contract.”

Dean Hall’s explanation was apparently accepted by his contemporaries. In 1918, Dean Henry Winthrop Ballantine of the University of Illinois College of Law read a paper to the Section on Legal Education of the American Bar Association that was very critical of correspondence law schools.<sup>17</sup> In condemning law study by correspondence, Dean Ballantine relies in part on Dean Hall’s earlier article.<sup>18</sup> Although the Ballantine paper devotes a couple of pages to a disparaging review of correspondence law school materials, there is no specific mention of *American Law and Procedure*.<sup>19</sup>

Thus, no longer any surprises about the names “La Salle Extension University,” “James Parker Hall,” and “Harry Sanger Richards” on the same page. And, I was not really surprised to learn that La Salle continued to use *American Law and Procedure* in its correspondence law courses<sup>20</sup> and to pay royalties to Dean Hall until 1926 and then to his family until at least 1978.<sup>21</sup>

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<sup>17</sup> Henry Winthrop Ballantine, *The Place in Legal Education of Evening and Correspondence Law Schools*, 4 Am. L. Sch. Rev. 369 (1919).

<sup>18</sup> Id at 374.

<sup>19</sup> Id at 376-377. Dean Ballantine does specifically (and favorably) mention the correspondence law project proposed by Professor Charles M. Hepburn of the University of Indiana Law School. Id at 376. See also Charles M. Hepburn, *A New Development in Legal Education*, 2 Am. L. Sch. Rev. 285 (1909).

<sup>20</sup> *Application of Saunders*, 295 F. Supp. 263 (D.C. V.I. 1969) (“[P]etitioner enrolled at the La Salle Extension University, a correspondence institution in Chicago, and commenced his studies in American Law and Procedure on May 23, 1963. Three years later, he was awarded an LL.B. Degree, Bachelor of Law, from La Salle University.”).

<sup>21</sup> James Parker Hall, Jr., *The Times of My Life and the Hall Family* (1991) (D’Angelo Law Library, University of Chicago) (“These [*American Law and Procedure* volumes] were used for over sixty years paying him royalties until he died in 1929, and then to his heirs until recently. Livingston and I received checks in modest amounts from 1928 until 1978 from La Salle.”). “Livingston” is, of course, Pro-





*The Birmingham, Alabama home of La Salle Extension University graduate and civil rights lawyer Arthur D. Shores, showing damage from a bombing in September 1963.*

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I was more surprised to see *American Law and Procedure* cited in law review articles, including a lead article by Professor Judith Resnik in the *University of Southern California Law Review*.<sup>22</sup> And I was embarrassed but not surprised to learn that for a 10-year period of time, a graduate of La Salle Extension University, Arthur Davis Shores, may have been the only Black lawyer in the State of Alabama.<sup>23</sup> Shores went on to a career in law and public service that any lawyer would be proud of. A leading figure at the bar during the civil rights movement in the 1940s, '50s, and '60s, he worked

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fessor (and, for a time, Vice Dean) Livingston Hall of the Harvard Law faculty. Wolfgang Saxon, *Livingston Hall, 92, Former Vice Dean At Harvard Law*, N.Y. Times, Nov. 22, 1995, <http://query.nytimes.com/gst/fullpage.html?res=9A03E6DA1339F931A15752C1A963958260>.

<sup>22</sup> Judith Resnik, *Tiers*, 57 S. Cal. L. Rev. 837, 992 fn 731 (1984).

<sup>23</sup> Eric Pace, *Arthur D. Shores, 92, Lawyer And Advocate for Civil Rights*, N.Y. Times, Dec. 18, 1996, <http://query.nytimes.com/gst/fullpage.html?res=9C02E5DE1F3EF93BA25751C1A960958260&sec=&spon=>.

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with Robert L. Carter, Charles Hamilton Houston, Thurgood Marshall, Constance Baker Motley, and others to desegregate the railroad unions and the public schools, and to resist state-sponsored race discrimination at a time when to do so was to put yourself in harm's way (see, for example, the photo above).<sup>24</sup> In 1969 he became the first Black member of the Birmingham City Council.<sup>25</sup>

*American Law and Procedure* – good books.



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<sup>24</sup> See, e.g., *Steele v. Louisville & N. R. Co.*, 245 Ala. 113, *rev'd*, 323 U.S. 192 (1944); *Adams v. Lucy*, 228 F.2d 619 (5th Cir. 1956); *Briggs v. Elliott*, 342 U.S. 350 (1952); *NAACP v. Alabama*, 360 U.S. 240 (1959); *Gober v. City of Birmingham*, 133 So.2d 697 (Ala. App. 1961), *rev'd*, 373 U.S. 374 (1963).

<sup>25</sup> Pace, *Arthur D. Shores*, note 23.